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December 18, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

Viasat, Inc. (“Viasat”) responds to the letter¹ filed by Hughes Network Systems, LLC (“Hughes”) on December 7, 2018 regarding the two parties’ pending petitions for reconsideration² of the *Performance Metrics Order*.³ Much of that letter simply reiterates arguments appearing in Hughes’s opposition to Viasat’s petition, and Viasat has already addressed those arguments in detail in its reply submitted on November 19, 2018.⁴ Meanwhile, the new contentions raised in Hughes’s letter are easily rebutted.

Hughes now argues that Viasat’s petition should be denied because the *Performance Metrics Order* “was in full force and effect” when it was adopted “and parties were obligated to rely on it.”⁵ This argument is absurd on its face. Nothing in the Commission’s rules prevents reconsideration of orders that are “in full force and effect.” Indeed, if that were the standard, reconsideration would almost never occur. Relatedly, Hughes makes new claims about its expectations regarding the *Performance Metrics Order* and the process that would follow,

¹ See Hughes Network Systems, LLC, Letter, WC Docket No. 10-90 (filed Dec. 7, 2018) (“Hughes Letter”).

² See Petition for Reconsideration of Viasat, Inc., WC Docket No. 10-90 (filed Sept. 19, 2018); Petition for Clarification, or in the Alternative, Reconsideration of Hughes Network Systems, LLC, WC Docket No. 10-90 (filed Sept. 19, 2018).

³ *Connect America Fund*, WC Docket No. 10-90, Order, DA 18-710 (WCB, WTB, OET rel. July 6, 2018) (“*Performance Metrics Order*”).

⁴ See Reply of Viasat, Inc. in Support of Its Petition for Reconsideration, WC Docket No. 10-90 (filed Nov. 19, 2018).

⁵ Hughes Letter at 4.

pointing to its subjective reading of a caveat contained in the *Order*⁶ and a belief that the relevant portion of the *Order* would not be reconsidered going forward.⁷ Contrary to Hughes's contention, these claims are nothing more than an argument that "a party's subjective 'expectations' with respect to a particular ruling forever prevents the agency from reconsidering that ruling,"⁸ and as Viasat has explained, such an argument is entirely without merit.⁹

Hughes also purports to distinguish certain cases cited in Viasat's reply, but does so in a manner that has no bearing whatsoever on Viasat's reconsideration request. Hughes argues that the D.C. Circuit's holdings in *DIRECTV v. FCC* and *Mobile Relay Associates v. FCC*—that a regulatory change "that upsets expectations . . . may be sustained if it is reasonable,"¹⁰ and that the Commission thus may make reasonable post-auction changes to service rules¹¹—apply only where the rule changes at issue are "prospective" in nature.¹² But Hughes goes on to discuss the application of these cases to Hughes's petition for reconsideration, which argues that the *Order* engaged in retroactive rulemaking.¹³ Hughes does not dispute that these cases support Viasat's petition—nor could it, as Viasat's petition plainly seeks prospective changes or clarifications that fit squarely within this precedent.

Accordingly, Hughes's letter, like its opposition, provides no basis for denying Viasat's petition for reconsideration. Please contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

John P. Janka
Matthew T. Murchison

⁶ See *id.* at 3-4.

⁷ See *id.* at 4.

⁸ See *id.* (quoting Viasat Reply at 5).

⁹ See Viasat Reply at 5-6.

¹⁰ *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 826 (D.C. Cir. 1997) (internal quotation marks and citation omitted).

¹¹ *Mobile Relay Associates v. FCC*, 457 F.3d 1, 10 (D.C. Cir. 2006).

¹² Hughes Letter at 5.

¹³ See *id.* (discussing these cases and asserting that, "[t]o the extent that the [*Performance Metrics Order*] is interpreted to apply to the NY auction, it would unquestionably change what the law was in the past").

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